



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE

13901 Crown Court, Woodbridge, Virginia 22193

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Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
BRAMBLETON GROUP, LLC
FOR
BRAMBLETON – PHASE II
VIRGINIA WATER PROTECTION (VWP) INDIVIDUAL PERMIT
AUTHORIZATION NO. 03-2118**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Brambleton Group, LLC, regarding the Brambleton – Phase II development, for the purpose of resolving certain violations of State Water Control Law and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Board” means the State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. “Brambleton” means Brambleton Group, LLC, a limited liability company authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Brambleton Group, LLC is a “person” within the meaning of Va. Code § 62.1-44.3.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

5. “Discharge” means, when used without qualification, a discharge of a pollutant, or any addition of a pollutant or combination of pollutants, to state waters or waters of the contiguous zone or ocean other than a discharge from a vessel or other floating craft when being used as a means of transportation.
6. “Fill” means replacing portions of surface water with upland, or changing the bottom elevation of surface water for any purpose, by placement of any pollutant or material including but not limited to rock, sand, earth, and man-made materials and debris. 9 VAC 25-210-10.
7. “Fill Material” means any pollutant which replaces portions of surface water with dry land or which changes the bottom elevation of a surface water for any purpose. 9 VAC 25-210-10.
8. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
9. “NRO” means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
10. “Order” means this document, also known as a “Consent Order” or “Order by Consent,” a type of Special Order under the State Water Control Law.
11. “Permit” or “Virginia Water Protection Permit” means Individual Permit Authorization No. 03-2118 issued under Va. Code § 62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code § 62.1-44.5 or otherwise serves as the Commonwealth's certification under § 401 of the federal Clean Water Act (33 United States Code (“USC”) § 1344.
12. “Pollutant” means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution. 9 VAC 25-210-10.
13. “Pollution” means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters: (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the Board, are “pollution.” Va. Code § 62.1-44.3; 9 VAC 25-210-10.

14. “Property” or “Parcel” means Brambleton – Phase II, a 2,000 acre mixed use planned community with residential units, schools, a village center, community center/place of worship, playing fields, a recreation center, parks, a golf course, and associated infrastructure located on the east and west sides of Belmont Ridge Road (Route 659), just north of its intersection with Evergreen Mills Road (Route 621) in Loudoun County, Virginia owned by Brambleton Group, LLC.
15. “Regulations” means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 *et seq.*
16. “Significant alteration or degradation of existing wetland acreage or function” means human-induced activities that cause either a diminution of the areal extent of the existing wetland or cause a change in wetland community type resulting in the loss or more than minimal degradation of its existing ecological functions. 9 VAC 25-210-10.
17. “State Water Control Law” means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 2.2 (Va. Code §§ 62.1-44.15:20 through 62.1-44.14:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.
18. “State waters” means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3 and 9 VAC 25-210-10.
19. “Surface water” means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
20. “USACE” means the United States Army Corps of Engineers.
21. “Va. Code” means the Code of Virginia (1950), as amended.
22. “VAC” means the Virginia Administrative Code.
23. “Wetlands” means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. 9 VAC 25-210-10.

SECTION C: Findings of Fact and Conclusions of Law

1. Brambleton owns the Property located in Loudoun County, Virginia.
2. DEQ issued a Permit to Brambleton on February 24, 2004. The Permit authorized the total permanent impact to 6.58 acres of wetlands, consisting of 4.28 acres of palustrine

forested (PFO) wetlands, 0.09 acre of palustrine scrub-shrub wetlands, and 2.21 acres of palustrine emergent wetlands, as well as 0.05 acre of open water and 18,510 linear feet of stream channel. Compensation was to be provided through the on-site creation of 11.80 acres of PFO wetlands, 15.33 acres of open water, the on-site preservation of 21,839 linear feet of stream channel, 61.99 acres of upland buffer, and 13.77 acres of on-site non-impacted wetlands.

3. On December 9, 2009, DEQ staff completed a compliance review of the permit file and on December 29, 2009, DEQ Staff conducted a compensation site inspection for compliance with the conditions and requirements of the Permit and the State Water Control Law and the Regulations.
4. Based on the December 9, 2009 review of the DEQ files and during the December 29, 2009 site inspection, DEQ staff observed the following:
 - a. Failure to meet success criteria for compensation site.
 - b. Failure to submit a survey/plat of the stream channels and associated buffers to be preserved in nonimpact areas, documentation that these areas have been surveyed or platted, and proof of recordation of preservation in perpetuity.
 - c. Failure to submit a survey/plat of the completed wetland compensation areas, documentation that these areas have been surveyed or platted, and proof of recordation in perpetuity.
 - d. Failure to provide a pre-construction notification that construction was to commence on the mitigation site.
 - e. Failure to provide three of the four required semi-annual construction monitoring reports documenting construction activities in the permitted impact areas.
 - f. Failure to provide the required mitigation monitoring reports documenting compensation activities.
5. Permit Special Condition Part I.K.9 requires “[i]f the compensation area fails to be established as per the specified performance criteria, the reasons for this failure shall be determined and a corrective action plan, schedule, and monitoring plan shall be submitted to DEQ-NVRO for approval prior to or with the next required monitoring report. All problems shall be corrected by the permittee.”
6. Permit Special Condition Part I.D.14 requires the permittee to “preserve all stream channels and associated upland buffers in perpetuity (as indicated on the Final Preservation Plan received December 18, 2003). These areas shall be surveyed or platted on a phase-by-phase basis prior to the initiation of any construction within that phase and the survey or plat shall be recorded.”
7. Permit Special Condition Part I.D.15 requires. that these completed wetland compensation “areas shall be surveyed or platted sixty (60) days from the completion of final grading within the wetland compensation area, and the survey or plat shall be recorded .”

8. Permit Special Condition Part I.D.9 requires “[c]onstruction monitoring reports shall be submitted to DEQ semiannually by the last day of April and October, for the life of the permit or until construction activities are complete to document the progress of construction activities.
9. Permit Special Condition Part I.D.17 requires that “[a]ll wetland compensation monitoring reports shall be submitted by November 30th of the monitoring year.”
10. Permit Special Condition Part I.D.16 requires “DEQ-NVRO shall be notified in writing at least ten (10) days prior to the initiation of activities at the compensation site. The notification shall include a projected schedule of activities and construction completion.”
11. 9 VAC 25-210-116 A, states that “[c]ompensatory mitigation for project impacts shall be sufficient to achieve no net loss of existing wetland acreage and no net loss of functions in all surface waters.”
12. 9 VAC 25-210-90 requires permittees to comply with all conditions of the Permit.
13. On February 18, 2010, as a result of the December 9, 2009 review of the DEQ files and the December 29, 2009 site inspection, DEQ issued NOV No. W2010-02-N-0010 to Brambleton for the violation of Regulations 9 VAC 25-210-116.
14. DEQ staff conducted a partial compliance inspection of the construction activities on August 18, 2010 and completed the inspection on August 25, 2010.
15. During the compliance inspections conducted in August 2010, DEQ staff observed unauthorized discharge of fill material, a pollutant, to approximately 890 linear feet of unnamed tributaries to Broad Run and South Fork Broad Run and 0.11 acre of PFO wetland, each of which are surface waters within the Potomac River Watershed, and 0.40 acre of upland preservation buffer area.
16. Va. Code § 62.1-44.15:20 and the Regulation 9 VAC 25-210-50 prohibit the dredge, fill or discharge any pollutant into, or adjacent to surface waters, or otherwise alter the physical, chemical or biological properties of surface waters and make them detrimental to beneficial uses or without a permit issued by the Director.
17. On September 3, 2010, as a result of the August 18, 2010 and August 25, 2010 compliance inspections, DEQ issued NOV No. W2010-09-N-0001 to Brambleton for the violation of Va. Code § 62.1-44.15:20 and Regulation 9 VAC 25-210-50.
18. On September 9, 2010, Brambleton responded to the two NOVs. The letter was drafted by the Brambleton’s consultant, Acorn Environmental, Inc. (Acorn). The response included a conceptual mitigation site corrective action plan, the declaration of restrictions and covenants, and the mitigation monitoring reports for years two and three to address the wetland compensation site violations.

19. On September 14, 2010, DEQ staff met with Brambleton and Acorn to discuss the violations and their response to the two NOV's.
20. On September 27, 2010, at Brambleton's request and with them present, DEQ staff conducted a follow-up site inspection.
21. On April 19, 2011, Acorn submitted a letter on Brambleton's behalf responding to the NOV. The response detailed a revised assessment of the impacts taken on-site. The revised totals are 0.044 acre of PFO and 535 linear feet (0.058 acre) of stream channel.
22. On June 8, 2011, Acorn submitted a report of additional impacts taken by Brambleton of approximately 4.04 acres of buffer not listed in the two previous NOV's.
23. Based on the results of the December 9, 2009 file review; December 29, 2009 site inspection; August 18, 2010 and August 25, 2010 inspections; September 14, 2010 meeting; September 27, 2010 inspection; April 19, 2011 submission; and June 8, 2011 submission, the Board concludes that Brambleton has violated Va. Code § 62.1-44.15:20, 9 VAC 25-210-50, 9 VAC 25-210-90, 9 VAC 25-210-116(a) and Permit Special Condition Parts I.D.9, I.D.14, I.D.15, I.D.16, I.D.17, and I.K.9 as described in paragraph C.4 through C.12 above.
24. In order for Brambleton to return to compliance, DEQ staff and Brambleton have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Brambleton Group LLC, and Brambleton Group LLC agrees to:

1. Perform the actions described in Appendix A of this Order and
2. Pay a civil charge of \$103,950.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Brambleton Group LLC shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with

the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Brambleton Group LLC for good cause shown by Brambleton Group LLC, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Brambleton Group LLC admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Brambleton Group LLC consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Brambleton Group LLC declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Brambleton Group LLC to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Brambleton Group LLC shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Brambleton Group LLC shall

show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Brambleton Group LLC shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the Brambleton Group LLC intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Brambleton Group LLC. Nevertheless, Brambleton Group LLC agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. Brambleton Group LLC petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Brambleton Group LLC.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Brambleton Group LLC from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Brambleton Group LLC and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

14. By its signature below, Brambleton Group LLC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 14th day of December, 2011.

A handwritten signature in black ink, appearing to read "Thomas A. Faha", written over a horizontal line.

Thomas A. Faha, NRO Regional Director
Department of Environmental Quality

Brambleton Group LLC voluntarily agrees to the issuance of this Order.

Date: 9-13-11 By: [Signature], VP
(Person) (Title)
Brambleton Group LLC

Commonwealth of Virginia

City/County of Loudoun

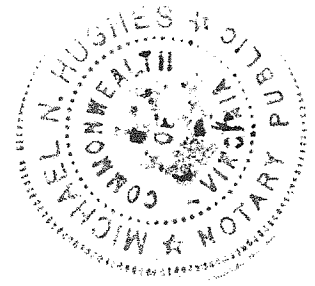
The foregoing document was signed and acknowledged before me this 13th day of
September, 2011, by Stephen T. Schulte who is
Vice-President of Brambleton Group LLC on behalf of the corporation.

Michael N. Hughes
Notary Public

125444
Registration No.

My commission expires: May 31, 2015

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

Brambleton Group LLC, owner of the Brambleton - Phase II shall submit:

1. Within 30 days of the execution of this Order,
 - a. A Revised Stream Preservation Plan including a map depicting the location, dimensions, and resource type of all the areas proposed for preservation, the draft protective instrument meeting the requirements of VWP Individual Permit Authorization No. 03-2118 Part I Special Condition D.14 and K.22 for review and approval by DEQ.
 - b. Submit documentation to DEQ that 185 stream credits has been purchased from a DEQ approved stream mitigation bank located within the same HUC as the Property or an adjacent HUC located within the Potomac River watershed sufficient to compensate for impacts to 185 linear feet linear feet of the of unnamed tributaries to Broad Run and South Fork Broad and meet the requirements of 9 VAC 25-210-116.
 - c. A separate, approvable, Corrective Action Plan (CAP) for (1) the onsite unauthorized impacts to surface waters as sited in NOV No. W2010-09-N-0001, and (2) the failure of the wetland mitigation site to meet success criteria. Each CAP shall be sufficient to achieve no net loss of existing wetland acreage and no net loss of functions in all surface waters in accordance with 9 VAC 25-210-116. Brambleton shall respond to any DEQ Notice of Deficiency regarding the CAP within 14 calendar days.
 - (1) Upon DEQ approval of each CAP, Brambleton shall begin implementation of the CAP in accordance with the schedule contained therein. Any changes to the DEQ approved CAP or schedule shall not be initiated without advance notice to and approval by DEQ. Brambleton shall complete the CAP in accordance with its terms.
 - (2) If the performance criteria specified in the approved CAP are not achieved at the end of any monitoring period, Brambleton shall so advise DEQ in the applicable monitoring report for that monitoring period and shall describe why it appears the criteria could not be achieved. If DEQ thereafter so directs, Brambleton shall submit to DEQ for review and approval an alternative CAP within 60 days of DEQ's letter requiring the same. The DEQ-approved alternative CAP shall then be implemented by Brambleton in accordance with the schedule set forth in the DEQ approved alternative CAP.
 - (3) If the performance criteria specified in the DEQ approved CAP or any alternative CAP are not achieved by the end of the last monitoring period and DEQ determines that additional corrective action cannot sufficiently address the reasons for such failures, Brambleton shall submit to DEQ for review and

approval, within 30 days of such determination, a proposal to purchase mitigation bank credits or contributions to an in-lieu fee fund to address any remaining corrective action required in the Final CAP or, as applicable, any previously submitted alternate CAP. Brambleton shall respond to any DEQ notice of deficiency to the proposal in accordance with the terms of the notice. Brambleton shall purchase mitigation bank credits or make contributions to an in-lieu fund, as approved by DEQ in accordance with this paragraph, within 30 days of DEQ approval.

2. Within 60 days of DEQ approval of the Stream Preservation Plan required by paragraph 1.a, provide proof of recordation of the Declaration of Restrictive Covenant for the stream preservation areas.
3. Unless otherwise specified in this Order, Brambleton Group LLC shall submit all requirements of Appendix A of this Order to:

Department of Environmental Quality
Northern Regional Office
Attn: Enforcement
13901 Crown Court
Woodbridge, VA 22193